

13 July 1976

MEMORANDUM FOR: Deputy Director of Personnel for
Recruitment and Placement

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FROM : [REDACTED]
Chief, Review Staff, OP

SUBJECT : Proposed Bill S-3572, Restriction on Employment
of Aliens in the Civil Service

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This is in response to the informal note from AD/Pers noting we would be coordinating with you on a response to the OLC query as to the impact of the subject Bill on Agency employment practices. The impact or effect, as we see it, depends on the interpretation of the scope of "civil service" as used in the Bill. While the title of the Bill makes reference to the "competitive service," the proposed amendment to 5 U.S.C.A. Section 3301 states "civil service." The Revision Notes to this section define "civil service" in the terms used in 5 U.S.C.A. Section 2101 which states ". . . the civil service consists of all appointive positions in the executive, judicial and legislative branches of the Government of the United States, except positions in the Armed Services." The FPM Letter 831-18, 7 July 1967, which was issued in response to our negotiations with the CSC for retirement and insurance benefits for contract employees, states ". . . some agencies use a personal contract as the appointment document . . ." (Emphasis added) Hence, contract employees would appear to be included in the definition. Further, the Notes of Decision (Section 2101) would indicate all CIA positions, staff and contract, are included in the definition.

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Assuming our reasoning above is correct, the proposal in the Bill would have some impact on Agency hiring practices in certain limited areas. [REDACTED] has long hired foreign nationals by excepted appointment in the Civil Service; they have Civil Service Retirement among other government employee benefits. There are presently some [REDACTED] in this category.

The Agency also has employee contracts with resident aliens, and I gather with a few true aliens, which provide certain government employee benefits such as regular sick and annual leave,

and FECA. While resident in the United States they are covered under Social Security; overseas there is no retirement benefit. We assume these employees would be considered to be in the "civil service."

I would question if the authority in the CIA Act of 1949, paragraph 8, is sufficient to override the restrictions of the proposed Senate Bill to permit the Agency to continue to provide the civil service benefits described above to [redacted] alien employeesSTATSPEC or to the resident aliens with the employee type contracts. On the other hand, to request exemption may pose political questions which are beyond the purview of OP. The implications of the Bill will undoubtedly have greater impact on the State Department whose Foreign Service Local (FSL) employees, I believe, are all employed in the civil service rather than the Foreign Service. It may be worthwhile to query the Department on their stand on this matter. In any event, should the restrictions prevail, it would be worthwhile to request a "grandfather" clause to protect the interests of the employees who have accepted a career with the Agency premised on certain identified benefits.



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